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12 Mary Kathleen McCarthy, Than Ho, Randy Sekany,  
13 Ken Heredia, Teresa Harris, Jon Reger, Moses Serrano,  
14 John Mukhar, Dale Dapp, James Atkins, William Buffington  
15 and Kirk Pennington

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IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SANTA CLARA

SAN JOSE POLICE OFFICERS' ASSOCIATION,  
Plaintiff,

v.

CITY OF SAN JOSE AND BOARD OF  
ADMINISTRATION FOR THE POLICE AND FIRE  
DEPARTMENT RETIREMENT PLAN OF CITY OF  
SAN JOSE,

Defendants.

AND RELATED CROSS-COMPLAINT  
AND CONSOLIDATED ACTIONS

Case No. 1-12-CV-225926

(and Consolidated Actions 1-12-CV-  
225928, 1-12-CV-226570, 1-12-CV-  
226574, and 1-12-CV-227864)

**PLAINTIFFS SAPIEN, ET AL., HARRIS,  
ET AL., AND MUKHAR, ET AL.,  
OPPOSITION TO DEFENDANT CITY OF  
SAN JOSE'S OBJECTION TO  
EVIDENCE**

**Date: June 7, 2013  
Time: 9:00 a.m.  
Dept: 2  
Judge: Hon. Patricia M. Lucas**

**Trial Date: July 22, 2013**

1 Defendant objects to Exhibits 1 through 6 attached to the Declaration of Christopher  
2 E. Platten on the grounds of relevance, undue influence, inadmissible legal conclusion and  
3 inadmissible hearsay. None of these objections are well taken. Each of these Exhibits  
4 constitute admission of a party, which under the terms of Evidence Code §1220 are not  
5 made admissible by the hearsay rule. Evidence Code §1220 provides as follows:

6  
7 Evidence of a statement is not made inadmissible by the  
8 hearsay rule when offered against the declarant in an action to  
9 which he is a party in either his individual or representative  
10 capacity, regardless of whether the statement was made in his  
11 individual or representative capacity.  
12 1 Wit. Cal. Ev. 5<sup>th</sup> Ed., 919.

13 There is no requirement that the declarant have personal knowledge of the facts of the  
14 admission and that there is no ground of objection that the declarant statement is in the  
15 form of inadmissible opinion or conclusion. 1 Wit. Cal. Ev. 5<sup>th</sup> Ed., 919-920.

16 In each instance statements were made that constitute an admission that pension  
17 rights and benefits are vested, which statements were made by attorneys representing City  
18 of San Jose either in arbitration proceedings or as amicus curie in an appellate court case.  
19 The fact that in each instance the admissions were made by attorneys in their official  
20 capacity with the City of San Jose dispels of the objection on the basis of legal conclusion.

21 In addition defendant objections on the basis that only a portion of the transcripts  
22 have been submitted and therefore the information is incomplete and misleading. The  
23 simple answer to that objection is under Evidence Code §356, defendant has the ability to  
24 submit any additional portions of the transcript it feels were erroneously omitted.

25 Since the most significant issue in this case is the question of vested rights any  
26 admission concerning vested rights on the part of defendant as it relates to pension  
27 benefits is certainly relevant.

28 Defendant's objection to Request for Judicial Notice, Exhibit 1 falls into the same  
category as the admissions contained in the transcripts submitted as Exhibits 1 through 6  
in Mr. Platten's Declaration.

1 Defendant's objection to Request for Judicial Notice No. 2, the PERB Complaint, is  
2 not well taken. Although defendant is correct that no party is seeking an adjudication in this  
3 case concerning compliance with the meet and confer obligations, defendant as noted in  
4 plaintiffs' opposition to the motion for summary adjudication makes statements that in fact  
5 they had complied with the meet and conferred obligations. That issue is disputed but must  
6 be decided before the Public Employee Relations Board.

7 Based on the foregoing it is respectfully submitted that all of plaintiffs' objections to  
8 Mr. Platten's Declaration as well as the two Request for Judicial Notice should be  
9 overruled.

10  
11 Dated: May \_\_\_\_\_, 2013

12 WYLIE, McBRIDE,  
13 PLATTEN & RENNER

14   
15 JOHN McBRIDE

16 Attorneys for Plaintiffs and Cross-Defendants Robert Sapien,  
17 Mary Kathleen McCarthy, Than Ho, Randy Sekany,  
18 Ken Heredia, Teresa Harris, Jon Reger, Moses Serrano, John Mukhar,  
19 Dale Dapp, James Atkins, William Buffington and Kirk Pennington

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That I am now and at all times herein mentioned a citizen of the United States and resident of Santa Clara County, California. I am over the age of eighteen years and not a party to this action. My business address is 2125 Canoas Garden Ave., Suite 120, San Jose, CA 95125. On this date I served

X by placing a true copy thereof, enclosed in a sealed envelope with postage fully prepaid, in the United States Post Office mail at San Jose, Santa Clara County, California, addressed as set forth below. I am familiar with my firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of a party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

\_\_\_\_\_ by E-Mail - as follows: I personally sent to the addressee's e-mail address a true copy of the above-described document(s). I verified transmission.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 30th day of May, 2013, at San Jose, California.

  
Judith L. Casella

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